

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Implementing the Infrastructure Investment and
Jobs Act: Prevention and Elimination of Digital
Discrimination
GN Docket No. 22-69

NOTICE OF INQUIRY

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By the Commission: Chairwoman Rosenworcel and Commissioner Starks issuing separate statements.

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I. INTRODUCTION

1. One of the Commission’s foremost goals is to ensure that every person in the United States has equal access to high-quality, affordable broadband internet access service. Never before has the need for such access been greater. As the country and the world has confronted the COVID-19 pandemic, many of us have increasingly turned to our broadband connection to work and learn remotely, take advantage of telemedicine for vital healthcare needs, engage in civic activities, stay entertained, and keep in touch with friends and family. Every person across our Nation deserves—and must have—equal access to this crucial technology in the increasingly digital world; a person’s zip code should not determine their destiny. This proceeding initiates the process of establishing a shared understanding of the harms experienced by historically excluded and marginalized communities, and provides a grounding for meaningful policy reforms and systems improvements, as well as a framework for collaborative action to extend digital opportunity to everyone.

2. As the first step in achieving that goal, today, we commence a proceeding “to ensure that all people of the United States benefit from equal access to broadband internet access service,” with the intention of preventing and identifying steps the Commission should take to eliminate “digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin,”

consistent with Congress’s directive in section 60506 of the Infrastructure Investment and Jobs Act (Infrastructure Act).¹ We invite comment in this Notice of Inquiry (Notice) on the requirements encompassed in section 60506, with the intent of informing a forthcoming Notice of Proposed Rulemaking to implement the requirements of the Infrastructure Act. Specifically, we seek comment on the meaning of the terms and concepts included in the relevant provisions and how they should be applied in the context of ensuring equal access to broadband, preventing digital discrimination, and identifying steps the Commission should take to eliminate digital discrimination. We also seek comment on the framework of the rules we should adopt to achieve the goal of ensuring all people in the United States have equal access to broadband regardless of “income level, race, ethnicity, color, religion, or national origin.”²

II. BACKGROUND

3. On November 15, 2021, President Biden signed the Infrastructure Act into law. That Act includes a Title regarding broadband affordability which, among other things, directs the Commission to establish rules for the Affordable Connectivity Program,³ require the display of broadband consumer labels,⁴ and—the subject of this Notice—take action to prevent and eliminate digital discrimination.⁵ Section 60506 of the Infrastructure Act (now codified at 47 U.S.C. § 1754) institutes various requirements regarding the prevention and elimination of digital discrimination.⁶ Section 60506(a) sets forth a statement of policy: To the extent technically and economically feasible, “subscribers should benefit from equal access to broadband internet access service within the service area of a provider,” and the “Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.”⁷ This subsection defines equal access as “the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions.”⁸

4. Section 60506(b), in turn, requires the Commission to adopt rules not later than two years after enactment of the Infrastructure Act “to facilitate equal access to broadband internet access service.”⁹ In satisfying that obligation, the Commission is required to consider “the issues of technical and economic feasibility presented by that objective.”¹⁰ The Commission’s rules must be aimed at “(1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion or

¹ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021) (Infrastructure Act). Section 60506 of the Infrastructure Act is codified at 47 U.S.C. § 1754, *Digital Discrimination*.

² 47 U.S.C. § 1754(b)(1).

³ 47 U.S.C. § 1752; *see also Affordable Connectivity Program, Emergency Broadband Benefit Program*, WC Docket Nos. 21-450, 20-445, Report and Order and Further Notice of Proposed Rulemaking, FCC 22-2 (Jan. 21, 2022).

⁴ 47 U.S.C. § 1753; *see also Empowering Broadband Consumers Through Transparency*, CG Docket No. 22-2, Notice of Proposed Rulemaking, FCC 22-7 (2022) (*Broadband Labels NPRM*).

⁵ 47 U.S.C. § 1754. On January 20, 2021, the President issued Executive Order 13985 which established the policy that the federal government “should pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality.” *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

⁶ 47 U.S.C. § 1754.

⁷ 47 U.S.C. §§ 1754(a)(1), (a)(3).

⁸ 47 U.S.C. § 1754(a)(2).

⁹ 47 U.S.C. § 1754(b).

¹⁰ 47 U.S.C. § 1754(b).

national origin; and (2) identifying necessary steps for the Commission[] to take to eliminate discrimination described in paragraph (1).”¹¹

5. Section 60506(c) requires the Commission and the Attorney General to ensure that “[f]ederal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on (1) the income level of an area; (2) the predominant race or ethnic[] composition of an area; or (3) other factors the Commission determines to be relevant based on the findings in the record developed from the rulemaking under subsection (b).”¹² Paragraph (d) requires the Commission to “develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination”;¹³ and paragraph (e) directs the Commission to “revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.”¹⁴

6. *Pre-Existing Commission Authority to Address Discrimination and Promote Access.* Section 1 of the Communications Act of 1934, as amended (the Act), codifies as one of the core purposes of the Commission “to make available, so far as possible,” a “rapid, efficient, Nation-wide” wire and radio communication service with adequate facilities “to all of the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.”¹⁵ Pursuant to section 202(a), the Act also includes authority to prohibit unjust or unreasonable discrimination by common carriers in charges, practices, classifications, or regulations in connection with like communications services.¹⁶ The Universal Service provisions of section 254 promote access to telecommunications and information services for “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas.”¹⁷ And section 706 of the Act requires the Commission to conduct regular inquiries as to whether “advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion.”¹⁸ The Commission also articulated a new strategic goal in 2021 to “Promote Diversity, Equity, Inclusion and Accessibility,” in furtherance of which the agency will focus on actions it can take “to eliminate historical, systemic, and structural barriers that perpetuate disadvantaged or underserved individuals and communities.”¹⁹

7. *Communications Equity and Diversity Council.* On June 29, 2021, the Commission chartered the Communications Equity and Diversity Council (CEDC).²⁰ The mission of the CEDC is to present recommendations to the Commission on “advancing equity in the provision of and access to digital communication services and products for all people of the United States, without discrimination on the basis of race, color, religion, national origin, sex, or disability.”²¹ The Commission has appointed

¹¹ 47 U.S.C. §§ 1754(b)(1)-(2).

¹² 47 U.S.C. § 1754(c).

¹³ 47 U.S.C. § 1754(d).

¹⁴ 47 U.S.C. § 1754(e).

¹⁵ 47 U.S.C. § 151.

¹⁶ 47 U.S.C. § 202(a).

¹⁷ 47 U.S.C. § 254(b)(3).

¹⁸ 47 U.S.C. § 1302(a).

¹⁹ See Federal Communications Commission Fiscal Year 2022 Budget Estimates to Congress, at 9 (May 28, 2021), <https://www.fcc.gov/document/fcc-fy-2022-budget-estimates-congress>.

²⁰ In chartering the CEDC, the Commission renewed the charter of the Advisory Committee on Diversity and Digital Empowerment under a new name. *FCC Seeks Nominations for Membership on Communications Equity and Diversity Council*, Public Notice, 36 FCC Rcd 10391, 10391 (2021).

²¹ *Id.*

members to the CEDC and three of its working groups, including the Digital Empowerment and Inclusion Working Group, which has been tasked with “making recommendations for addressing digital redlining and other barriers that impact equitable access to emerging technology in under-served and under-connected communities.”²² Specifically, this Working Group is charged with making recommendations to the full Council to drive the Commission’s implementation of section 60506(d) of the Infrastructure Act, which requires the Commission to “develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination.”²³

8. *Task Force to Prevent Digital Discrimination.* On February 8, 2022, Chairwoman Rosenworcel announced the formation of the cross-agency Task Force to Prevent Digital Discrimination.²⁴ The Task Force will “focus on creating rules and policies to combat digital discrimination and to promote equal access to broadband across the country, regardless of zip code, income level, ethnicity, race, religion, or national origin.”²⁵

III. DISCUSSION

9. To determine how to best implement section 60506 of the Infrastructure Act, we seek general comment in this Notice on how to interpret the language of that section and develop a framework for the rules we must adopt pursuant to Congressional direction. We seek comment on subsection (b)’s direction to adopt rules to facilitate equal access to broadband, including preventing digital discrimination. We also seek comment on subsection (e)’s direction to revise our public complaint process to accept complaints related to digital discrimination.²⁶ Further, we seek comment generally on whether there are other federal regulatory regimes, states or localities, or public or private organizations that have successfully addressed these issues that we may look to as benchmarks to inform our inquiry.²⁷

²² *FCC Announces Working Group Members of the Communications Equity and Diversity Council*, Public Notice, DA 22-41 (Jan. 13, 2022).

²³ *Agenda Released for February 23, 2022 Virtual Meeting of the Communications Equity and Diversity Council*, Public Notice, DA 22-164 (WCB Feb. 16, 2022); 47 U.S.C. § 1754(d).

²⁴ Press Release, FCC, Chairwoman Rosenworcel Announces Cross-Agency Task Force to Prevent Digital Discrimination (Feb. 8, 2022), <https://docs.fcc.gov/public/attachments/DOC-380060A1.pdf>.

²⁵ *Id.*

²⁶ The record developed in response to this Notice will inform our implementation of subsection (c), which requires the Commission and Attorney General to ensure that “[f]ederal policies promote equal access to robust broadband internet access services by prohibiting deployment discrimination.” See Infrastructure Act § 60506(c)(3) (directing us to consider “findings in the record developed from the rulemaking under subsection (b)” in implementing this subsection). We also envision that the ongoing work of the CEDC, including any recommendations regarding matters covered by subsection (d), will inform the Commission’s actions in implementing that subsection. See Infrastructure Act § 60506(d) (requiring us to “develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination”).

²⁷ The Infrastructure Act defines “broadband internet access service” for section 60506 and the remainder of Title V as having “the meaning given the term in section 8.1(b) of [the Commission’s rules], or any successor regulation.” See Infrastructure Act § 60501(1); see also 47 CFR § 8.1(b) (defining broadband internet access service as “a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence or that is used to evade the protections set forth in this part.”). In this Notice, we use the terms “broadband” and “broadband internet access service” interchangeably.

A. Adoption of Rules

10. We seek comment to guide our implementation of Congress’s direction in subsection 60506(b). In that subsection, Congress directs the Commission to adopt rules “to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including (1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and (2) identifying necessary steps for the Commission[] to take to eliminate discrimination described in paragraph (1).”²⁸ Congress directs that we adopt these rules no later than two years after the date of enactment of the Infrastructure Act, which is November 15, 2023.²⁹

1. Definition of Equal Access

11. To determine how to fulfill Congress’s direction to “facilitate equal access,” we first seek comment on the defined term “equal access” in subsection 60506(a).³⁰ In that subsection, Congress defines “equal access” as “the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions.”³¹

12. *Equal Opportunity to Subscribe.* How should we interpret the phrase “equal opportunity to subscribe”?³² In light of the definitional language that follows this term in the statute, does this phrase mean that subscribers should be able to subscribe to comparable services at comparable terms and conditions? Does this phrase carry any additional meaning? Could the Commission’s precedent regarding eligible telecommunications carriers be instructive in interpreting the phrase? An eligible telecommunications carrier is a common carrier designated by a state commission—or in some instances by the Commission—that is eligible to receive universal service support and must provide service throughout a designated area.³³ Under the Act and Commission rules, eligible telecommunications carriers must provide the services the Commission designates for universal service support under section 254(c) throughout their entire designated service areas and advertise the availability of such services using media of general distribution.³⁴ In interpreting the phrase “equal opportunity to subscribe,”³⁵ should we look to Commission precedent regarding these obligations on eligible telecommunications carriers?³⁶ If so, how could this precedent inform our understanding of paragraph 60506(a)(2)? If we did draw from this precedent, should we understand the phrase “equal opportunity to subscribe” to be broader or narrower than an eligible telecommunications carrier’s existing statutory service obligation?

13. *Comparability.* We next seek comment on the two notions of comparability in the definition of equal access. How should we understand the phrase “an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics”?³⁷ What “other quality of

²⁸ 47 U.S.C. § 1754(b).

²⁹ *Id.*

³⁰ 47 U.S.C. § 1754(a).

³¹ 47 U.S.C. § 1754(a)(2).

³² *Id.*

³³ See 47 U.S.C. §§ 214(e)(2), (e)(3), (e)(6); 47 CFR § 54.201.

³⁴ 47 U.S.C. §§ 214(e)(1)(A)-(B); see also 47 CFR §§ 54.201(d)(1)-(2).

³⁵ 47 U.S.C. § 1754(a)(2).

³⁶ See, e.g., *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process For Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197, 10-90, Public Notice, 33 FCC Rcd 6696, 6697-700 (2018).

³⁷ 47 U.S.C. § 1754(a)(2).

service metrics” should we consider? Should they change over time? To the extent that the quality of service metrics change and evolve over time, how would we continue to judge comparability? When considering these various metrics, what does it mean for speeds, capacities, latency, or other metrics to be “comparable”? Should we establish a prescriptive range of differences within which a service would be “comparable” (e.g., a percentage difference)? If so, how would we determine the appropriate range? If not, how do we give meaning to this section while avoiding a prescriptive approach? In the Universal Service context, Congress has charged the Commission with ensuring that rural and urban areas have “reasonably comparable” access to telecommunications and information services.³⁸ To implement this language, the Commission collects annual survey data of the fixed voice and broadband services offered to consumers in urban areas and uses this data to develop reasonable comparability benchmarks for eligible telecommunications carriers subject to public interest obligations for fixed broadband.³⁹ Carriers receiving high-cost support must certify annually that they are meeting these benchmarks.⁴⁰ In addition, carriers receiving support under our Connect America Fund and Lifeline Programs are required to meet applicable speed and latency standards and are subject to detailed performance testing requirements.⁴¹ Are there any insights or lessons gleaned from how the Commission has employed this phrase in the Universal Service context that may be relevant to our interpretation of paragraph 60506(a)(2)?

14. How should our concept of comparable quality of service account for various technical practicalities? For example, how should we take into account the nature of network upgrade cycles, which may occur over a period of time?⁴² How should we account for network outages, or periods of network degradation due to disruptions in service or high utilization? Should we understand comparable quality of service to vary during times of network degradation? How should we interpret comparability across different services, including evaluating fixed broadband versus mobile broadband services? Should performance metrics be the same for fixed and mobile broadband?

15. We also seek comment on what “comparable terms and conditions” means.⁴³ Does this phrase refer to the price and duration of service contracts available to subscribers? Are there other characteristics of a broadband contract that would also be included under this category? For example, would this include customer support response time, data caps, promotional offerings, consumer premises equipment rental agreements, availability of devices that connect to the network, and/or the ways in which subscriber data is used by broadband providers? What other “terms and conditions” should we consider? Subsection 60506 does not list affordability as a factor for assessing a provider’s equal access obligation. Nevertheless, we seek comment on whether the Commission is required or permitted to take into account the affordability of terms and conditions. For example, while a service provider’s terms and conditions may be identical across an area, rates might nevertheless be prohibitively expensive for some in that area. Does equal access, as defined in subsection 60506, require that rates be not only comparable but also affordable? Should our inquiry vary depending on the business model of the entity providing broadband? For example, how should we interpret comparability in terms of facilities-based mobile wireless providers or providers that offer service through resale, roaming, or mobile virtual network

³⁸ See 47 U.S.C. § 254(b)(3).

³⁹ See 47 CFR § 54.313(a)(2)-(3); *Connect America Fund*, WC Docket No. 10-90, Report and Order, 29 FCC Rcd 13485 (WCB 2014). See, e.g., *WCB and OEA Announce Results of 2021 Urban Rate Survey for Fixed Voice and Broadband Services, Posting of Survey Data and Explanatory Notes, and Required Minimum Usage Allowance for Eligible Telecommunications Carriers*, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 13667 (2021).

⁴⁰ 47 CFR § 54.313(a).

⁴¹ See, e.g., *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509 (WCB 2018); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109 (2019).

⁴² 47 U.S.C. § 1754(a)(2).

⁴³ *Id.*

operating (MVNO) agreements? And how should we interpret comparability in terms of a service provider's pre-paid and post-paid wireless offerings?

16. Are there data sources we can leverage to compare quality of service metrics as well as other terms and conditions within a given area? In this regard, we note that the Commission may collect additional broadband information as a result of two rulemakings stemming from the Infrastructure Act. Information from these collections may include standardized pricing and broadband plan information,⁴⁴ as well as an annual collection of price and subscription data from providers participating in the Affordable Connectivity Program.⁴⁵ Could those data collections be useful in the context of identifying, preventing, or eliminating digital discrimination and, if so, how? Are there ways we could approach those data collections that would improve their utility in this context?⁴⁶

17. *Geographic Area.* How should we construe the phrase “in a given area” in the definition of equal access?⁴⁷ Does the different word choice signify that this refers to something other than “the service area of a provider of such service” used elsewhere in this subsection?⁴⁸ If so, how should we construe the “given area” in which the “equal opportunity to subscribe” is called for? What unit of geography would provide appropriate granularity and be easy to match with other data? Should we interpret the phrase in such a manner that it would track established geographical lines, such as city, county, and state boundaries or general demographic data such as U.S. Census statistical areas? Or should we define the “given area” in some way tied to the provision of broadband, such as the service area of a provider? For example, are there common industry practices that divide the provisioning of broadband into definable areas that could be relevant here? If “in a given area” should be construed as the service area of a provider, are ILEC service areas and local-franchise-agreement-defined areas for cable providers the right areas to use? How should we approach entities that are not ILECs or cable providers? Should we consider outage reporting metrics in our analysis?⁴⁹ Should we apply the same or different standards to define a “given area” for fixed and mobile services? The Commission has found repeatedly that because most consumers use their mobile wireless services at or close to where they live, work, and shop, they generally purchase mobile wireless services from service providers that offer and market such services locally.⁵⁰ Should we adopt the geographic market definition used in wireless transactions that defines and examines a local area, or would a larger geographic area be more appropriate?

2. Facilitating Equal Access

18. We seek comment on the affirmative obligation to adopt rules to “facilitate equal access” under subsection 60506(b).⁵¹ What does the word “facilitate” mean in this context? Does this word give

⁴⁴ See 47 U.S.C. § 1753; *Broadband Labels NPRM* at 5, para. 16.

⁴⁵ Infrastructure Act § 60502(c); *Broadband Labels NPRM* at 7-8, para. 25.

⁴⁶ We will consider the insights gleaned from the record in this proceeding as we act to implement Congressional direction on the Affordable Connectivity Program and broadband labeling.

⁴⁷ 47 U.S.C. § 1754(a)(2).

⁴⁸ See 47 U.S.C. § 1754(a)(1).

⁴⁹ See 47 CFR §§ 4.1-4.15.

⁵⁰ See, e.g., *Applications of T-Mobile US, Inc., and Sprint Corporation, Consent to Transfer Control of Licenses and Authorizations, Applications of American H Block Wireless L.L.C., DBSD Corporation, Gamma Acquisitions L.L.C., and Manifest Wireless L.L.C. for Extension of Time*, WT Docket No. 18-197, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd 10578, 10606, para. 68 (2019) (examining by cellular market area); *Applications of AT&T Inc., Leap Wireless International, Inc., Cricket License Col, LLC and Leap Licenseco, Inc. for Consent To Transfer Control and Assign Licenses and Authorizations*, WT Docket No. 13-193, Memorandum Opinion and Order, 29 FCC Rcd 2735, 2748-49, paras. 27-31 (2014).

⁵¹ 47 U.S.C. § 1754(b).

us broad discretion to adopt rules that would require, encourage, or otherwise incentivize equal access to broadband in certain geographic areas? Or is this obligation narrower and, if so, how? What rule or rules should the Commission adopt to fulfill this direction? What is the relationship between this language and paragraph (b)(1)? Read together, these provisions require us to “adopt final rules to facilitate equal access to broadband internet access service . . . including [] preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin.”⁵² Does the word “including” signify that the overarching direction to “facilitate equal access” is broader than section 60506(b)(1)’s specific goal of enacting rules aimed to “prevent[] digital discrimination”?⁵³ If so, what is captured by this broader concept of “facilitat[ing] equal access”? What other types of rules should the Commission consider that might achieve the objective of facilitating equal access to broadband? Should we adopt different types of rules for fixed and mobile broadband internet access service? As we consider rules to “facilitate equal access,” how should subsection (a), laying out the statement of United States policy, bear on that inquiry?⁵⁴ Does the language of that subsection, including direction that “the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service,” encourage or require us to take any particular approach?⁵⁵

19. Subsection (b) states that any adopted rules to facilitate equal access must “tak[e] into account the issues of technical and economic feasibility presented by that objective.”⁵⁶ What are examples of the technical or economic feasibility issues we might encounter? How are we obligated to take any such examples into account? Is it the responsibility of the service provider to disclose issues of technical or economic feasibility to help determine if they are unable to meet the equal access standard? What analyses on the part of the Commission or the provider would be required to demonstrate that the technical and economic feasibility obligation is met, and what data allows for such analyses? How can we best assess any claimed technical or economic infeasibility? Is there existing precedent analyzing these terms that we should draw from, such as precedent regarding sections 228(c)(5)(B),⁵⁷ 251,⁵⁸ or 615(c)?⁵⁹

3. Preventing and Eliminating Digital Discrimination

20. We seek comment on paragraphs (b)(1) and (b)(2). Paragraph (b)(1) establishes that one aspect of “facilitat[ing] equal access” is “preventing digital discrimination of access based on income level, race, ethnicity, color, religion or national origin.”⁶⁰ And paragraph (b)(2) establishes that another aspect is “identifying necessary steps for the Commission[] to take to eliminate discrimination described

⁵² 47 U.S.C. §§ 1754(b)-(b)(1).

⁵³ *Id.*

⁵⁴ 47 U.S.C. § 1754(a).

⁵⁵ 47 U.S.C. § 1754(a)(3).

⁵⁶ 47 U.S.C. § 1754(b). Subsection (a) contains similar language, reflecting that “[i]t is the policy of the United States that, insofar as technically and economically feasible . . .” 47 U.S.C. § 1754(a).

⁵⁷ 47 U.S.C. § 228(c)(5)(b) (requiring common carriers that offer local exchange service to, among other things, “offer telephone subscribers (where the Commission determines it is technically and economically feasible), in combination with the blocking option” that is described earlier in the provision).

⁵⁸ 47 U.S.C. § 251 (requiring, among other things, that each local exchange carrier has “[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission”).

⁵⁹ 47 U.S.C. § 615(c) (creating a federal advisory committee and providing the Commission the authority to promulgate regulations to implement the committee’s recommendations that are “necessary to achieve reliable, interoperable communication that ensures access by individuals with disabilities to an Internet protocol-enabled emergency network, where achievable and technically feasible”).

⁶⁰ 47 U.S.C. § 1754(b)(1).

in paragraph (1).⁶¹ As an initial matter, we seek comment on the relationship between these two paragraphs. How should we construe each paragraph’s use of a different verb: “prevent[] digital discrimination” in paragraph (b)(1), and “eliminate discrimination” in paragraph (b)(2)? Do these create distinct obligations and provide us with distinct authority, or should we read them to refer to the same general requirement? Do we satisfy paragraph (b)(2) by conducting a rulemaking pursuant to the Administrative Procedure Act to develop rules to “prevent[] digital discrimination”?⁶² Or by directing us to “identify[] necessary steps” is Congress referring to some other type of obligation?⁶³ If so, what does that obligation include and what should the output be? Does the distinction between “preventing digital discrimination” in paragraph (b)(1) and “identifying necessary steps . . . to eliminate discrimination” in paragraph (b)(2) mean that our efforts under paragraph (b)(2) should focus on rectifying or mitigating the impacts of past discrimination, rather than “preventing” discrimination on a prospective basis?⁶⁴

21. *Digital Discrimination.* We seek comment on what “digital discrimination” means.⁶⁵ In light of the provided definition of “equal access” in paragraph (a)(2) and reference to that concept in (b), should we understand digital discrimination to be a lack of equal access to broadband based on one of the listed characteristics?⁶⁶ Or is there a broader way to construe this language that is supported by subsection 60506?

22. We seek comment on how we should understand when digital discrimination is “based on” one of the listed characteristics.⁶⁷ Does the term “based on” require discriminatory intent? If so, how would we determine the presence or absence of discriminatory intent? Would such an approach be practicably difficult to enforce? Alternatively or in addition, should we establish a “discriminatory effects” or disparate impact test? As an initial matter, is such an approach permissible under subsection 60506? We note that under the Fair Housing Act, the Department of Housing and Urban Development has issued regulations that provide that “unlawful housing discrimination . . . may be established by a practice’s discriminatory effect, even if not motivated by discriminatory intent.”⁶⁸ Under this approach, “facially neutral practices that have an unjustified discriminatory effect on the basis of a protected characteristic, regardless of intent, violate the [Fair Housing] Act.”⁶⁹ If we have the statutory authority to do so, should we take a similar approach in adopting rules to address digital discrimination rules and, if we did, how would we determine when certain practices “have an unjustified discriminatory effect”?⁷⁰ Are there particular outcomes that indicate or suggest that digital discrimination has occurred? How can we distinguish between discrimination and other factors that might influence the provision of broadband, particularly technical or economic factors that the subsection mandates we consider? Are there other

⁶¹ 47 U.S.C. § 1754(b)(2). We further seek comment on whether this paragraph (b)(2) contains a typographical error when using the word “Commissions” or if Congress intended to refer to a Commission in addition to the Federal Communications Commission when it included “Commissions” in paragraph (b)(2). 47 U.S.C. § 1754(b)(2).

⁶² 47 U.S.C. § 1754(b)(1).

⁶³ 47 U.S.C. § 1754(b)(2).

⁶⁴ 47 U.S.C. §§ 1754(b)(1), (b)(2).

⁶⁵ 47 U.S.C. § 1754(b)(1).

⁶⁶ See 47 U.S.C. §§ 1754(a)(2), (b).

⁶⁷ 47 U.S.C. § 1754(b)(1).

⁶⁸ 24 CFR § 100.5(b).

⁶⁹ Department of Housing and Urban Development, Reinstatement of HUD’s Discriminatory Effects Standard, 86 Fed. Reg. 33590, 33591 (June 25, 2021); see also 24 CFR § 100.500 (establishing liability under Fair Housing Act on basis of discriminatory effect).

⁷⁰ Department of Housing and Urban Development, Reinstatement of HUD’s Discriminatory Effects Standard, 86 Fed. Reg. 33590, 33591 (June 25, 2021).

laws, definitions, regulations, or frameworks we could or should consider to determine when digital discrimination is “based on” one of the listed characteristics?

23. We seek comment on the listed characteristics of “income level, race, ethnicity, color, religion, or national origin[.]”⁷¹ We recognize that many of these terms have established meanings in other areas of law regarding discrimination.⁷² Do we need to further define these terms, or is their meaning self-evident, especially in light of existing precedent? If we did further define these terms, should we defer to other precedents or sources of law to give them meaning and, if so, which? Should our efforts to prevent digital discrimination focus on preventing discrimination against particular individuals or communities in the aggregate that meet one of the listed characteristics? If we focus on communities in the aggregate, how do we determine that a given community meets the listed characteristics? Should we look to demographic data or standards, such as those used by the Office of Management and Budget (OMB)—which we have followed in other contexts⁷³—or the Census Bureau?⁷⁴ How should we account for the fact that data sources may not use the specific characteristics listed in paragraph 60506(b)(1) in their data collections? For example, the Census Bureau does not use the term “color” in its data collections; how can we ensure that we benefit from robust use of existing data while following the language of the statute?

24. Are there any other considerations we should take into account when addressing digital discrimination based on a given listed characteristic? For example, does taking action to prevent discrimination based on income level require us to consider additional or unique economic factors? If so, what type of analysis is appropriate for discrimination based on income level? For example, should we consider a service provider’s potential return on investment in its decisions to offer service in certain areas or allocate resources to making timely repairs? And how should we respond if we are presented with an argument that a given area’s income level makes it economically infeasible for a provider to offer equal access to broadband in that area?⁷⁵ If underlying cost or geographic hurdles exist in conjunction with demand in an area that makes it unprofitable, how should the Commission address such a situation? How would the availability of federal and state funding for broadband deployment, including, but not limited to, Universal Service program funding, inform such arguments? When understanding what

⁷¹ 47 U.S.C. § 1754(b)(1).

⁷² See, e.g., *Albert-Aluya v. Burlington Coat Factory Warehouse Corp.*, 470 F. App’x 847, 850-51 (11th Cir. 2012) (addressing employment discrimination on the basis of national origin); *Deravin v. Kerik*, 335 F.3d 195, 201-02 (2d Cir. 2003) (describing the plaintiff’s race in an employment discrimination case as African-American and explaining the relationship between claims of discrimination on the basis of race and national origin); *Vill. of Bellwood v. Dwivedi*, 895 F.2d 1521, 1531 (7th Cir. 1990) (finding that the comparative experiences of white and black testers in housing markets can be evidence of intentional, race-based, discrimination); *Equal Employment Opportunity Commission v. Windings, Inc.*, No. 15-2901 (PAM/JSM), 2016 WL 1587905 (D.Minn. Mar. 18, 2016) (addressing employment discrimination on the basis of race); *U.S. EEOC v. Pioneer Hotel Inc.*, Case No: 2:11-CV-01588-LRH-GFW, 2015 U.S. Dist. LEXIS 125681 *8 (D.Nev. June 15, 2015) (addressing harassment in the workplace on the basis of color); *Bouley v. Young-Sabourin*, 394 F. Supp. 2d 675, 677-78 (D. Vt. 2005) (addressing discrimination under the Fair Housing Act on the basis of religion); *Rodriguez v. Guttuso*, 795 F. Supp. 860, 865 (N.D. Ill. 1992) (addressing discrimination under the Fair Housing Act on the basis of color); see also 29 CFR § 1606.1 (providing EEOC definitions of discrimination on the basis of national origin); 29 CFR § 1605.1 (defining religious practices for purposes of employment laws prohibiting discrimination on the basis of religion).

⁷³ See, e.g., FCC, Fifth Report on Ownership of Broadcast Stations: FCC Form 323 and Form 323-E Ownership Data as of October 1, 2019 at 18-19 (2021), <https://docs.fcc.gov/public/attachments/DA-21-1101A1.pdf> (citing Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, Notice of Decision, 62 Fed. Reg. 58782, 58789 (Oct. 30, 1997)).

⁷⁴ See United States Census Bureau, *Glossary*, <https://www.census.gov/programs-surveys/geography/about/glossary.html> (last visited Feb. 22, 2022).

⁷⁵ See 47 U.S.C. §§ 1754(a), (b)(1), (b)(2).

“income level” is for purposes of this analysis, should we look to individual or household income (on an individualized basis), or median household income or poverty rate (on an aggregate basis), or some other concept or concepts? Are there existing Commission rules or statutory obligations that would help us understand discrimination based on income?⁷⁶ Do any other bases for discrimination present unique concerns we should consider? For example, are there unique considerations we should take into account regarding members of Tribal Nations? Finally, should we understand the listed characteristics in section 60506(b)(1) of the Infrastructure Act to be exclusive?⁷⁷ If the list of characteristics is not exclusive, how should the Commission determine that our rules addressing digital discrimination need to address discrimination based on any other characteristics, such as age, disability, geographic location (e.g., those living in rural areas), or level of English proficiency? And what additional characteristics should be addressed by our rules?

25. To what entities should our rules preventing digital discrimination apply? The Commission has previously recognized that consumers can access broadband through a range of technologies, such as digital subscriber line (DSL), cable modem, fiber, wireless, and satellite, and that broadband can be fixed or mobile.⁷⁸ Can the providers of all of these types of broadband engage in digital discrimination? Can entities other than broadband providers engage in digital discrimination and, if so, what types of entities? For example, can owners of multiple-tenant environments digitally discriminate against those living and working in their buildings?⁷⁹

26. *Identifying Instances of Digital Discrimination.* We seek comment on how to identify when and where digital discrimination is occurring. In order to identify areas and individuals impacted by digital discrimination, we will benefit from the use of data. We seek comment on data sources that would enable us to identify occurrences of digital discrimination based on the listed characteristics. For example, would data regarding demographic characteristics and broadband availability and adoption information be of particular importance to this analysis? If so, what sources should we rely on for data regarding broadband information and demographic characteristics? Are there other categories of data that are fundamental to such analysis?

27. Could we leverage existing and pending Commission information collections regarding broadband to support identification of areas and individuals potentially impacted by digital discrimination? For example, the Broadband Data Task Force is currently leading an effort to collect location-based data on fixed broadband service availability and develop more precise maps through the Broadband Data Collection.⁸⁰ Will the Broadband Data Collection data—indicating the availability of broadband, subject to challenge by stakeholders, with breakouts by technology, and download and upload

⁷⁶ We note that Title VI of the Communications Act mandates that “[i]n awarding a franchise or franchises, a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” 47 U.S.C. § 541(a)(3); *see also* Letter from Ross Lieberman, Senior Vice President of Government Affairs, ACA Connects, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 2 (filed Mar. 2, 2022); Letter from Rick Chessen, Senior Vice President, Legal and Regulatory Affairs and Chief Legal Officer, NCTA, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Mar. 10, 2022).

⁷⁷ 47 U.S.C. § 1754(b)(1).

⁷⁸ *See, e.g.*, FCC, *Getting Broadband Q&A* (Feb. 5, 2020), <https://www.fcc.gov/consumers/guides/getting-broadband-qa> (detailing types of broadband); *Broadband Labels NPRM*, at 5, para. 16 (proposing to adopt differing requirements for fixed and mobile broadband providers to fulfill section 60504(b)(1) of the Infrastructure Act).

⁷⁹ *See Improving Competitive Broadband Access to Multiple Tenant Environments*, GN Docket No. 17-142, Report and Order and Declaratory Ruling, FCC 22-12, at 1, para. 1 (Feb. 15, 2022) (*2022 MTE Report and Order and Declaratory Ruling*).

⁸⁰ Press Release, FCC, Acting Chairwoman Rosenworcel Establishes Broadband Data Task Force (Feb. 17, 2021), <https://www.fcc.gov/document/rosenworcel-establishes-broadband-data-task-force>.

speed—be an appropriate tool, in combination with other data, to help evaluate whether access is equal? What kinds of analyses would be appropriate in making that determination? How could we account for network upgrade cycles, which may occur over an extended period and may not be reflected in data that represent a given point in time? Are there other sources of broadband availability information that the Commission should look to when conducting analyses? Will relying on data sources that are not specifically designed to identify discrimination assist the Commission in effectively identifying such areas? Would data on broadband subscriptions or adoption be relevant in evaluating the presence of digital discrimination? The FCC collects tract-level, fixed-broadband subscription data and state-level, mobile-broadband subscription data on its Form 477; and the Census Bureau includes questions on broadband subscriptions in its American Community Survey. How could such data assist in identifying instances where access is not equal? Should the Commission, either instead of or in addition to relying on existing data sources, consider a new data collection? If so, what information should be collected to identify and measure discrimination in quality of service, deployment, reliability, and other forms?⁸¹ For example, should the Commission collect additional information related to the reliability of broadband networks in the Commission’s Network Outage Reporting System (NORS) and Disaster Outage Reporting System (DIRS) and if so, what specific information should be collected? Should the Commission collect data on usage caps, throttling, and speeds that the service was reduced to? If so, what is the appropriate frequency to gather this data and should it be at the subscriber level? Would it be necessary to collect subscriber-level information and are there any legal or practical obstacles to doing so?⁸² If not collected at the subscriber level, what would be an appropriate level of granularity for such a data collection? Would any such collections present unique privacy concerns and, if so, how should we address them?

28. Could we leverage data sources outside of the Commission for alternative or additional data? For example, the United States Census Bureau has existing demographic surveys, including the decennial census, some of which are conducted on an ongoing basis and measure many of the demographic characteristics specified in section 60506(b)(1).⁸³ Are there particular surveys conducted by the Census Bureau that would be appropriate to rely on? What survey design aspects are most important for the Commission to consider when determining whether a dataset is suitable for such analysis? In particular, what is an appropriate level of geographic granularity for such information (e.g., census tract, block group) and how should the Commission balance the tradeoff between granularity and recency of the data? In addition, would data from the Census Bureau (e.g., non-public, more disaggregated or raw survey data) be useful to the Commission in identifying instances of unequal access? We seek comment on any other sources of demographic information and factors the Commission should consider in identifying data to rely on. Would using any data sources present unique privacy concerns and, if so, how can we address them? We also invite commenters to identify instances of digital discrimination, supported with data where possible, to help us better understand the scope and nature of digital discrimination. We acknowledge the work that has been done to document these issues,⁸⁴ and invite commenters to address how they should inform the Commission’s efforts.

⁸¹ See Letter from Jenna Leventoff, Senior Policy Counsel, Public Knowledge, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1 (filed Mar. 8, 2022) (arguing that the Commission “must collect more and better data” concerning “the price of service, information about network resiliency during disasters and on sunny days, the actual speeds consumers experience, and information about how many people within multi-dwelling units are served” and overlay the collected data on demographic information).

⁸² See, e.g., 18 U.S.C. §§ 2702-03 (limiting disclosure by a provider of electronic communication service to the public of information pertaining to a subscriber to or customer of such service, and providing exceptions).

⁸³ United States Census Bureau, *U.S. Census Bureau at a Glance* (Oct. 24, 2017), <https://www.census.gov/about/what/census-at-a-glance.html>.

⁸⁴ See, e.g., Communications Workers of America in partnership with the National Digital Inclusion Alliance, *Lumen’s Digital Disparity: Underinvestment in Infrastructure Discriminates Against Lower-Income, Rural, and Native American Customers* (2021), https://cwa-union.org/sites/default/files/20210624_lumen_report.pdf;

(continued....)

29. *Steps to Prevent Digital Discrimination.* We next seek comment on what steps the Commission should take to “prevent[]” and “eliminate” digital discrimination.⁸⁵ As an initial matter, we seek comment on the nature of our efforts to fulfill this Congressional direction. Should we take a broad perspective and address discrimination in multiple contexts? We observe that subsection 60506(c) uses the distinct phrase “deployment discrimination.”⁸⁶ Does the use of a different, broader notion of “digital discrimination of access” in subsection 60506(b) signify that our focus should not be limited to only issues of deployment?⁸⁷

30. Should we adopt rules that broadly and directly prohibit digital discrimination?⁸⁸ For example, should we adopt a rule prohibiting certain entities from engaging in digital discrimination of access based on the listed characteristics? Would such an approach be too broad to be practicable, from both a compliance and enforcement perspective? Could we address concerns about practicability by adopting clear and comprehensive definitions? Alternatively, should we take an approach that prohibits specific enumerated types of conduct? For example, the Department of Housing and Urban Development has prohibited “[u]sing different qualification criteria or applications, or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis or sale or rental approval procedures or other requirements, because of” a protected characteristic.⁸⁹ Should we follow that example and prohibit discrimination in certain aspects of the provision of broadband? If so, what aspects would we target? For example, should we target credit checks of potential customers inasmuch as they capture one or more of the listed characteristics? Are there other specific and enumerated discriminatory practices we could prohibit? Should any rules we adopt consist of, include, or emphasize a process and framework for individuals to bring claims of digital discrimination, rather than an exclusive focus on Commission enforcement?⁹⁰ How, if at all, would the substance of rules that include an individualized right of action differ from rules that rely on Commission enforcement?

31. Alternatively or in addition, should we adopt rules to require, encourage, or otherwise incentivize certain entities to take affirmative steps to prevent digital discrimination? For example, should we adopt a rule requiring certain entities to provide broadband at the same service quality, terms, and conditions throughout a given service area? How should such a rule account for technical and economic feasibility issues? Or would such an approach be too broad to be practicable, or cause undesirable negative effects? Should we take a narrower approach? Further, would requiring entities to

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Communications Workers of America & National Digital Inclusion Alliance, AT&T’s Digital Redlining Leaving Communities Behind for Profit (2020), <https://cwa-union.org/sites/default/files/20201005attdigitalredlining.pdf>; The Greenlining Institute, On the Wrong Side of the Digital Divide: Life Without Internet Access, and Why We Must Fix It in the Age of COVID-19 (2020), <https://greenlining.org/publications/online-resources/2020/on-the-wrong-side-of-the-digital-divide/>; USC Annenberg Research Network for International Communication & USC Price Spatial Analysis Lab, Who Gets Access to Fast Broadband? Evidence from Los Angeles County 2014-17 (2019), <https://arnicusc.org/wp-content/uploads/2019/10/Policy-Brief-4-final.pdf>; Bill Callahan, National Digital Inclusion Alliance, AT&T’s Digital Redlining Of Cleveland (2017), <https://www.digitalinclusion.org/blog/2017/03/10/attdigital-redlining-of-cleveland/>; S. Derek Turner, Free Press, Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption (2016), https://www.freepress.net/sites/default/files/legacy-policy/digital_denied_free_press_report_december_2016.pdf.

⁸⁵ See 47 U.S.C. §§ 1754(b)(1)-(2).

⁸⁶ 47 U.S.C. § 1754(c).

⁸⁷ 47 U.S.C. § 1754(b)(1).

⁸⁸ The Commission’s broadcast and cable Equal Employment Opportunity rules and policies to address discriminatory hiring practices in the broadcasting and cable industries include a rule that takes this approach. See 47 CFR §§ 73.2080(a), 76.73(a).

⁸⁹ 24 CFR § 100.60(b)(4); see generally 24 CFR § 100.60(b) (describing other enumerated prohibited actions).

⁹⁰ See *infra* Sec. III.B (seeking comment on use of public complaint process in context of digital discrimination).

do particular acts, such as obligations regarding dissemination of service offerings, or subjecting them to recordkeeping and reporting rules and audits be sufficient and effective in this context? Are there other specific obligations that the Commission should or could require? How, if at all, should we account for severability as we adopt rules to prevent digital discrimination, and are there unique severability considerations for any specific parts of our analysis?⁹¹

32. Should we take action on certain policy areas to address the causes or outcomes of digital discrimination? For example, we recently adopted a Report and Order and Declaratory Ruling to promote competition in multiple tenant environments and recognized the impact that increased consumer choice and broadband deployment could have on marginalized communities,⁹² and the Public Safety and Homeland Security Bureau has recently refreshed the record on a proceeding regarding network resiliency, including in communities with vulnerable populations, during disasters.⁹³ Should we take additional action on these proceedings or any other issues that may uniquely relate to communities that meet the listed characteristics of section 60506 and further Congress's direction to prevent digital discrimination and facilitate equal access? If so, what action should we take?

33. We are mindful that, in acting on the Congressional direction to “prevent[]” and “eliminate” digital discrimination, we must “tak[e] into account the issues of technical and economic feasibility presented by that objective.”⁹⁴ We seek comment on this requirement. How, specifically, should we take these issues into account? And what issues of technical and economic feasibility should we consider? We invite commenters to identify concerns regarding technical and economic feasibility of any and all proposals put forth in the record of steps we should take to prevent digital discrimination. What data sources will help us evaluate “technical and economic feasibility”? If we rely on any particularized data sources to identify when impermissible digital discrimination has occurred, should we allow entities to dispute any data we rely on? Further, should the burden be on entities to document and justify issues of technical and economic feasibility in the first instance, or should the Commission only require such documentation and justification in the case where an entity is under investigation for or credibly accused of digital discrimination?

B. Complaints

34. We seek comment on the statutory requirement in subsection 60506(e) that the Commission “revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.”⁹⁵ Currently consumers use the Commission's Consumer Complaint Center to file informal complaints.⁹⁶ The Commission's consumer complaint process, overseen by the Consumer and Governmental Affairs Bureau, is a long-standing, free and efficient way for consumers to raise issues with their service providers and bring issues to the attention of the Commission. The collective data received from consumer complaints help us monitor what

⁹¹ Letter from Belinda E. Nixon, Counsel to the Multicultural Media, Telecom and Internet Council, Perkins Coie LLP, to Marlene H. Dortch, Secretary, FCC, GN Docket No. 22-69, at 1-2 (filed Mar. 9, 2022) (identifying topics in this proceeding where the Commission should consider severability).

⁹² See *2022 MTE Report and Order and Declaratory Ruling*, at 1, 6, paras. 1-2, 9.

⁹³ See *Public Safety and Homeland Security Bureau Seeks Comment on Wireless Service Providers' Safety Measures For their Customers During Disasters in Connection With The Consolidated Appropriations Act of 2021*, PS Docket No. 11-60, Public Notice, 36 FCC Rcd 5944, 5945 (PSHSB 2021) (asking about “network infrastructure sharing among operators during natural disasters; and communicating disaster-related information with customers, particularly members of vulnerable populations, including individuals who are low-income, members of the disabilities community, or non-English speaking”).

⁹⁴ 47 U.S.C. § 1754(b).

⁹⁵ 47 U.S.C. § 1754(e).

⁹⁶ See FCC, *Consumer Complaint Center*, <https://consumercomplaints.fcc.gov/hc/en-us> (last visited Feb. 22, 2022).

consumers are experiencing and inform our policy work. In addition, consumer complaints may lead to investigations and serve as a deterrent to the companies we regulate.

35. In what way can the Commission revise its existing consumer complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination or equal access to broadband? How can we ensure that the Commission's complaint process is accessible to people who are victims of digital discrimination and may lack access to broadband?⁹⁷ What aspects of a complaint of digital discrimination are unique that we should accommodate in the consumer complaint process? Should our changes focus on one of either elimination or prevention of digital discrimination, or equally emphasize both? We seek comment on what revisions, if any, are necessary to the consumer complaint process to comply with the statutory requirement. Would the Request for Dispute Assistance model used by the Commission to resolve accessibility problems be a useful model for resolving complaints related to digital discrimination?⁹⁸

36. Apart from the Commission's existing informal consumer complaint process, should we establish an alternative complaint process for violations of any rules we adopt to prevent digital discrimination? Many anti-discrimination laws and frameworks enable individuals to bring individualized complaints. Would such a scheme be practicable and desirable in the context of digital discrimination at issue here? How would it work, what would be the requirements to make a successful claim, and what remedies would be available to individuals who make a successful claim? Is there an existing alternative complaint process that the Commission could look to in developing a process for accepting complaints related to digital discrimination? Should we establish a dedicated ombudsperson to use alternative dispute resolution⁹⁹ to facilitate resolution of such complaints?

C. Other Questions Regarding Section 60506

37. We invite comment to drive our implementation of the remaining sections of section 60506. First, we seek comment on subsection 60506(c), which states that the Commission and the Attorney General "shall ensure that Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on (1) the income level of an area; (2) the predominant race or ethnicity composition of an area; or (3) other factors the Commission determines to be relevant based on the findings in the record developed from the rulemaking under subsection (b)."¹⁰⁰ Second, we seek comment on subsection 60506(d), which directs us to "develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination."¹⁰¹

38. We seek comment on how subsection 60506(a), in which, Congress states a "policy of the United States" that "subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service,"¹⁰² and declares that "the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service," should inform our implementation of the remainder of section 60506.¹⁰³

39. We seek comment on the relationship between section 60506 of the Infrastructure Act,

⁹⁷ We note that currently, consumers may file complaints via the internet or by phone or mail. *See* FCC, *Filing an Informal Complaint* (Mar. 17, 2020), <https://www.fcc.gov/consumers/guides/filing-informal-complaint>.

⁹⁸ *See* 47 CFR § 14.32.

⁹⁹ *See generally*, 47 CFR § 1.18 (adopting alternative dispute resolution procedures for use by the Commission).

¹⁰⁰ 47 U.S.C. § 1754(c).

¹⁰¹ 47 U.S.C. § 1754(d).

¹⁰² 47 U.S.C. § 1754(a)(1).

¹⁰³ 47 U.S.C. § 1754(a)(3).

codified at 47 U.S.C. § 1754, and other provisions of the Communications Act of 1934, as amended. As we have explained, sections 1 and 202(a) of the Act contain concepts of anti-discrimination applicable in the communications context.¹⁰⁴ Should we draw on these sections and the Commission’s history applying them in interpreting and applying section 60506? If so, how? Are there efforts we should take under other sources of authority over services other than the broadband at issue in section 60506, to address discrimination regarding those services? If so, what actions should we take, and on what basis?

D. Other Efforts to Promote Digital Equity and Inclusion

40. The Commission, as part of its continuing effort to advance digital equity for all,¹⁰⁵ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations¹⁰⁶ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission’s relevant legal authority.

IV. PROCEDURAL MATTERS

41. *Ex Parte Rules.* This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰⁷ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or

¹⁰⁴ See 47 U.S.C. §§ 151 (the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex”), 202(a) (“It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service . . .”). See also supra n.76 (noting that Title VI includes a provision that requires that “a franchising authority shall assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.”).

¹⁰⁵ Section 1 of the Communications Act of 1934 as amended provides that the FCC “regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex.” 47 U.S.C. § 151.

¹⁰⁶ The term “equity” is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (January 20, 2021).

¹⁰⁷ 47 CFR § 1.1200 *et seq.* Although the Commission’s rules do not generally require *ex parte* presentations to be treated as “permit but disclose” in Notice of Inquiry proceedings, see *id.* § 1.1204(b)(1), we exercise our discretion in this instance, and find that the public interest is served by making *ex parte* presentations available to the public, in order to encourage a robust record. See *id.* § 1.1200(a).

other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).¹⁰⁸ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf).¹⁰⁹ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

42. *Comment Filing Procedures.* Pursuant to sections 1.415, 1.419, and 1.430 of the Commission's rules, 47 CFR §§ 1.415, 1.419, 1.430, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: www.fcc.gov/ecfs.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
 - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.
 - Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹¹⁰

43. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be publicly available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, when FCC Headquarters reopens to the public.

44. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

45. *Contact Person.* For additional information on this proceeding, contact Emily Caditz, Wireline Competition Bureau, Competition Policy Division, at Emily.Caditz@fcc.gov or (202) 418-2268.

¹⁰⁸ 47 CFR § 1.1206(b).

¹⁰⁹ 47 CFR § 1.49(f).

¹¹⁰ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

V. ORDERING CLAUSE

46. Accordingly, IT IS ORDERED, pursuant to Sections 1, 2(a), 4(i), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152(a), 154(i), and 403, and section 60506 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1245-46 (2021), codified at 47 U.S.C. § 1754, that this Notice of Inquiry IS ADOPTED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A
THE INFRASTRUCTURE INVESTMENT AND JOBS ACT SECTION 60506

The text below is the Infrastructure Investment and Jobs Act section 60506.

DIVISION F—BROADBAND

TITLE V—BROADBAND AFFORDABILITY

SEC. 60506. DIGITAL DISCRIMINATION.

(a) STATEMENT OF POLICY.—It is the policy of the United States that, insofar as technically and economically feasible—

- (1) subscribers should benefit from equal access to broadband internet access service within the service area of a provider of such service;
- (2) the term “equal access”, for purposes of this section, means the equal opportunity to subscribe to an offered service that provides comparable speeds, capacities, latency, and other quality of service metrics in a given area, for comparable terms and conditions; and
- (3) the Commission should take steps to ensure that all people of the United States benefit from equal access to broadband internet access service.

(b) ADOPTION OF RULES.—Not later than 2 years after the date of enactment of this Act, the Commission shall adopt final rules to facilitate equal access to broadband internet access service, taking into account the issues of technical and economic feasibility presented by that objective, including—

- (1) preventing digital discrimination of access based on income level, race, ethnicity, color, religion, or national origin; and
- (2) identifying necessary steps for the Commissions to take to eliminate discrimination described in paragraph (1).

(c) FEDERAL POLICIES.—The Commission and the Attorney General shall ensure that Federal policies promote equal access to robust broadband internet access service by prohibiting deployment discrimination based on—

- (1) the income level of an area;
- (2) the predominant race or ethnicity composition of an area; or
- (3) other factors the Commission determines to be relevant based on the findings in the record developed from the rulemaking under subsection (b).

(d) MODEL STATE AND LOCAL POLICIES.—The Commission shall develop model policies and best practices that can be adopted by States and localities to ensure that broadband internet access service providers do not engage in digital discrimination.

(e) COMPLAINTS.—The Commission shall revise its public complaint process to accept complaints from consumers or other members of the public that relate to digital discrimination.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry (March 16, 2022).

In the very first sentence of the Communications Act, Congress directs the Federal Communications Commission to help make communications services available to “all the people of the United States . . . without discrimination on the basis of race, color, religion, national origin, or sex.” This language is not new. But it is time to address it with new urgency.

That’s because we are in the end days of a pandemic that has demonstrated that the digital divide in this country is very real. There are too many places where high-speed communications networks do not reach. There are too many people who don’t have the connections they need to fully participate in modern civic and commercial life. There are too many of us that have for too long been underserved and overlooked.

We can fix this. We need to. It’s about equity, opportunity, and making it possible for everyone to have a fair shot at 21st century success. It is also about the law. Because in addition to the very first sentence in the Communications Act, we now have new directives in the Infrastructure Investment and Jobs Act. The headline here is the \$65 billion investment we’re making in broadband nationwide. That includes the \$14.2 billion Affordable Connectivity Program that is now helping more than 10 million low-income households across the country get online. But there’s more. That’s because section 60506 of the Infrastructure Investment and Jobs Act directs us “to ensure that all people of the United States benefit from equal access” to broadband. It requires us to issue rules that facilitate this equal access, by preventing and eliminating digital discrimination, on the basis of “income level, race, ethnicity, color, religion, or national origin.”

That is a tall task. But we’re going to do it. Because we need connections—physical and digital—that strengthen our mutual bonds.

So with this proceeding we seek to identify the policies and practices that can lead to digital discrimination. Recognizing that this won’t be easy, we are going to do it in a thoughtful way—starting with today’s Notice of Inquiry. We ask how we should define digital discrimination and seek data and analytics to help inform our understanding of when, where, and why it happens. To do this, we need input from stakeholders far and wide: from the public; from state, local, and Tribal governments; from public interest advocates; from academics; from the private sector; and from anyone else with information and ideas.

The law also charges us with creating model policies and best practices for states and localities to help them take action to prevent digital discrimination in their communities. In addition, it directs us to coordinate with the Attorney General to make sure that federal policies support equal access to broadband. The questions we ask about these elements of the law will shape our work going forward.

This proceeding is a priority for the FCC. And it is led by three dynamos from our staff—D’wana Terry, Sanford Williams, and Alejandro Roark—who run the Task Force to Prevent Digital Discrimination. But our efforts do not stop here. We rechartered the Communications Equity and Diversity Council and expanded its mission beyond media to include diversity and equity issues across the technology sector. This group is also helping us develop the model policies for states and localities required under the law. Plus, we have made it a regular practice to seek comment on how the rulemakings we initiate impact diversity, equity, inclusion, and accessibility. These actions are consistent with the principles in Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, which we have used to guide and inform our work.

John Lewis said “Every generation leaves behind a legacy. What that legacy will be is determined by the people of that generation. What legacy do you want to leave behind?”

I'm the first woman ever confirmed as Chair of the FCC. Here's what I want to leave behind: A diverse agency that is more committed than ever before to realizing the power of broadband for all. I believe this goal is within reach. Now let's use this proceeding to help make it happen.

Thank you to the team responsible for this effort, including as I just noted, D'wana Terry, Sanford Williams, and Alejandro Roark of the Task Force to Prevent Digital Discrimination; Pam Arluk, Emily Caditz, Matt Collins, Adam Copeland, Rashann Duvall, CJ Ferraro, Trent Harkrader, Aurélie Mathieu, and Kris Monteith of the Wireline Competition Bureau; Eduard Bartholme, Diane Burstein, Emmitt Carlton, Matthew Duchesne, Barbara Esbin, Aaron Garza, Keyla Hernandez-Ulloa, Theodore Marcus, Sayuri Rajapakse, Suzy Rosen Singleton, and Kimberly Wild of the Consumer and Governmental Affairs Bureau; Cara Grayer, Maura McGowan, Joy Ragsdale, and Carolyn Williams of the Office of Communications Business Opportunities; Amy Brett, Garnet Hanly, Kari Hicks, and Susannah Larson of the Wireless Telecommunications Bureau; Jamila-Bess Johnson, Hillary DeNigro, and Brendan Holland of the Media Bureau; Michael Carowitz, Pamela Gallant, Jeffrey Gee, Kalun Lee, Janet Moran, and Ashley Tyson of the Enforcement Bureau; Nese Guendelsberger of the International Bureau; David Furth, Lauren Kravetz, and Nicole McGinnis of the Public Safety and Homeland Security Bureau; Eugene Kiselev, Eric Ralph, and Steven Rosenberg of the Office of Economics and Analytics; Thomas Buckley, Daniel Daly, Jae Seong, and Mark Stephens of the Office of the Managing Director; and Malena Barzilai, Michele Ellison, Rick Mallen, Linda Oliver, and Bill Richardson of the Office of General Counsel.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS**

Re: *Implementing the Infrastructure Investment and Jobs Act: Prevention and Elimination of Digital Discrimination*, GN Docket No. 22-69, Notice of Inquiry (March 16, 2022).

Certain forms of discrimination in the United States have an established history, context, and pattern. “Digital discrimination,” in contrast, is not as well defined. In fact, Congress has given this agency the heavy task of outlining and understanding its root causes, and ultimately implementing rules necessary to prevent and eliminate digital discrimination based on income level, race, ethnicity, color, religion, or national origin. The Notice of Inquiry we adopt today is the start.

While we are laying a foundation for rules preventing and eliminating digital discrimination, we must remember the people who are counting on us to get this right. For millions of vulnerable Americans, the lived experience of digital discrimination can take many forms. It could mean struggling to find basic connectivity while wealthier neighborhoods across town get faster and faster service. It could mean living in an apartment building some providers won’t serve, even as they wire buildings down the street. But one thing is clear: these Americans intuitively feel that something is not right.

Digital discrimination has consequences. Just last week, I met with a group of Public Housing Authorities who are working to close the digital divide in their communities. They talked about the transformative impact broadband has had in their communities, bringing with it economic, educational, and social opportunities that every American should have. And where the promise of broadband remains unfulfilled, too many of our neighbors remain on the outside looking in—knowing they are missing out on connections that would improve their lives. Today, we begin the hard work needed to change that.

I thank Chairwoman Rosenworcel and my colleagues for incorporating my suggestions into this item. In particular, we will seek comment about making our complaint process accessible to those who have been directly harmed by these practices. To effectively prevent and eliminate digital discrimination, we will need the public’s help. Digital discrimination, and the disconnection it causes, is particularly insidious because it robs its victims of many of the tools to do something about it. Our complaint processes must be straightforward, transparent, well publicized, and easily accessible to those with poor or no connectivity.

I am grateful to the many congressional leaders, particularly Congresswoman Yvette Clarke, who championed this issue and positioned the FCC to take action, as well as the Commission staff who prepared today’s Notice. It has my full support, and I look forward to reviewing a robust record.